

Governor's Blue Ribbon Water Task Force

Draft Meeting Notes

September 28, 2006

Attendees: Larry Blair, Conci Bokum, Tom Bowles, Brian Burnett, Frank Chaves, Wayne Cunningham, John D'Antonio, Eileen Grevey-Hillson, Lisa Henne, Steve Hernandez, Debbie Hughes, Howard Hutchinson, Sarah Kotchian, Elmer Lincoln, Paul Paryski, and Jack Westman.

Member Updates

Steve Hernandez reported that five domestic wells lawsuits have been filed. In contrast to Steve's lawsuit, which challenges the statute, most of the lawsuits are challenge the recently promulgated rules and regulations and assert that the State Engineer should not be able to use regulations to achieve something that he could not get done through legislation. Steve added that John D'Antonio has defended the need to manage domestic wells on the basis of the location of new wells near streams that have compact delivery issues. For example, on the Pecos River, 10,000 of the 15,000 acre-feet shortfall is due to domestic wells. Steve explained that in his lawsuit, there is no impairment from domestic wells. If Steve wins the lawsuit, the statute will fall and domestic well permit applicants will have to go through the same lengthy process as other water rights applications. Steve's trial is set for April. Once the case goes to trial, it will not be affected by new legislation. Jack Westman asked if any particular type of action by the legislature could result in Steve's client dropping the suit. Steve responded that he did not anticipate his client dropping the lawsuit, but Steve is willing to assist with figuring out how to mitigate the collateral impacts if he wins the case.

Sarah Kotchian asked whether the Task Force should develop an information sheet for the legislature on the implications of Steve's lawsuit. Jack Westman commented that he does not think that legislators have a good understanding of the potential impacts of the lawsuit or what needs to be done to mitigate those impacts. Jack volunteered to draft an information sheet and distribute it to Task Force members. Elmer Lincoln commented that any information that the Task Force distributes should be appropriate to the role of the Task Force as an advisory body to the governor. Brian suggested that once the Task Force comes to agreement on what the recommendations should be, the recommendations could be vetted first with the governor.

Eileen commented that there is a common assumption that domestic wells can be treated like water rights. John D'Antonio agreed that there is considerable confusion about the difference between water rights and the right to use a domestic well, and many people think that domestic well owners should be able to transfer a well permit into a water right for a mutual domestic. Steve Hernandez noted that mutual domestics in the southern part of the state are very aware of the need to purchase water rights, and the problem seems to be more prevalent in northern New Mexico.

Conci Bokum reported that the City of Santa Fe and Santa Fe County have reached an agreement on the Buckman Direct Diversion (BDD) cost sharing for operation. Jack

commented that his understanding is that the Buckman Board has reached agreements in the past, and then the county commissioners or the city councilors would subsequently try to change the terms. Conci responded that this time the chair of the BDD Board has talked to each councilor and commissioner to make sure that they would agree to the terms of the agreement.

Jack Westman reported that the City of Rio Rancho is considering an ordinance requiring approval of domestic wells inside the city limits [adopted October 11th]. The ordinance is patterned after the Santa Fe domestic wells ordinance and would allow the city to prevent people from installing domestic wells to avoid paying city water rates. Jack commented Rio Rancho faces significant constraints with water.

Eileen Grevey-Hillson commented that the mayor of Rio Rancho stated a couple of months ago that the city expects the population to grow to 250,000 within a short time frame. Eileen asked John D'Antonio if entities have been contacting the OSE to find out if there is sufficient water there for growth, and whether Rio Rancho has secured that water. John responded that his office has noticed that entities looking to come in to the state are becoming more aware of water issues. John also commented that water constraints are frequently overlooked throughout the western states, for example, Arizona is allowing development based on junior water rights, and Montana allows up to 10 acre-feet per year of domestic use without a permit. Howard Hutchinson added that Arizona is not regulating domestic wells at all, even if a well is right by a stream. John also commented that the Upper Colorado basin has not used its apportionment while the Lower Colorado Basin has overused its apportionment. The Upper Basin is now telling Lower Basin that it needs to find other water, perhaps through desalination or cloud seeding. John added that there are also looming compact issues related to efforts by Arizona and Nevada to develop tributary streams. Elmer Lincoln commented that absent the Indian settlements, the compacts themselves could also be in litigation.

Task Force members discussed the gap between promoting New Mexico for economic development and the constraints on resources. Frank Chaves commented that there has been a lot of regional discussion about transportation, access to health care, etc, but no discussion about water. Sarah Kotchian commented that the Task Force has been reluctant to talk about whether water will keep pace with development, and wondered if there is more that the Task Force can do to raise the visibility of that issue. Sarah also commented that the connection between economic development and water has not been well articulated by state leaders, and that the state needs to get ahead of the issue. Howard Hutchinson commented that the municipalities do not want to talk about the fact that they can use eminent domain to condemn water, and some municipalities have already condemned agricultural water. As a side note, Howard added that in Arizona, the conversion of agricultural water to M&I did not yield as much water as was anticipated.

John D'Antonio stated that it is important that the state continue to fund water initiatives to keep pace with the development that is without question going to occur. John added that there is no reason to perpetuate the polarization between agricultural and urban needs because the state now has the mechanism in place to address water issues in a fair and equitable manner. Jack Westman commented that he does not think that the economic

development community really understands what John is trying to do. Jack suggested that it would be helpful if John were to give a presentation to the economic development community, including developers.

Clean Water and Cloud Seeding – Tom Bowles, Science Advisor to Governor Richardson

Tom discussed the widespread problems with water quality and waterborne illness throughout the world. He also described specific areas in which he thinks New Mexico can contribute to this problem, including in developing methods to detect the avian flu virus in water [see August meeting notes], developing methods for biological control of viruses, using DNA sequencing to develop drugs to treat waterborne infectious diseases, and developing microbes that can be used to remediate legacy waste at LANL.

Tom asked Task Force members to give him input on what they think are the most pressing water quality issues in New Mexico. Sarah Kotchian suggested that Tom contact the NM Department of Public Health to get the agency's perspective on what the priorities should be and what approaches have worked in the past. Water quality issues identified by Task Force members included:

- lack of adequate sewage treatment systems, especially for smaller communities where large regional systems are not feasible,
- difficulty in meeting Safe Drinking Water Act standards, particularly the new arsenic standard,
- high turbidity related to poor watershed condition,
- poor watershed condition and land use management that cause an increase in pollution-carrying runoff and a reduction in pollution treatment through natural processes (filtering of stormwater through subsurface flow or movement through the vadose zone),
- pharmaceuticals and endocrine disruptors,
- generic standards for stream water quality that are not achievable for all parts of the state due to natural conditions,
- inadequate data collection on causes of impairment due to the design of field data forms,
- fire impacts on watersheds,
- toxic substances (such as asphalt sealers) entering surface water, and
- urban stormwater.

Brian Burnett concurred that there are numerous water quality issues in New Mexico, but recommended that Tom choose one issue to focus on. Brian suggested that groundwater contamination from septics would be timely because of its prevalence, its impacts on human health and the environment, and the recent regulations put into place by the NM Environment Department.

Tom reported that he met recently with Sig Silber and Roy Stoesz from the New Mexico Weather Modification Association to discuss cloud seeding. Sig and Roy explained to Tom the physical basis for how cloud seeding works. Tom commented that the thermodynamics and physics are quite well understood, but the quantitative yield is less understood because it is very difficult to establish a baseline. A test of cloud seeding in New Mexico that was conducted from 1968-1972 indicated that precipitation was increased by about 8% from cloud seeding, which is similar to estimates from other studies. A seeded cloud can be compared to a control cloud in a nearby location, but it introduces many variables that reduce the confidence level of the data.

Sig and Roy's group is proposing to do a pilot cloud seeding project that would include extensive monitoring to evaluate the impacts of seeding. The project cost is estimated at \$1.4M. If the data indicate that cloud seeding is feasible in New Mexico, the project would include the development of a cloud seeding plan for the state. Six other states in the west have active cloud seeding programs. If effective, cloud seeding could be an economically viable means to get additional water for the state because the cost is relatively low (around \$30 per acre foot for ground seeding and <\$10 per acre foot for plane seeding). Tom commented that he supports the project and its emphasis on monitoring, and sees it as a way to position New Mexico as a leader in the western states for innovative water management.

Debbie Hughes commented that most of the Soil and Water Conservation Districts have been interested in cloud seeding and would like to work with the governor's office on this effort.

Steve Hernandez commented that one of the reasons that weather modification is under the purview of the Interstate Stream Commission is the potential impact of cloud seeding on the amount of water that NM would have to deliver to Texas. New Mexico needs to have agreements in place with Texas if there is potential to impact the compact.

John D'Antonio commented that flooding is a concern with cloud seeding. The timing and location of seeding would have to be carefully considered. John added that the impact of climate change on weather patterns will also need to be considered.